

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION**

In Re:

Chapter 13

Bankruptcy No. 03-41687

Albert Henry Knack, Jr. and
Kerri Sue Knack,

**NOTICE OF HEARING AND MOTION FOR
RELIEF FROM STAY**

Debtors

1. Farmers State Bank- Dennison, ("Secured Creditor") by and through its undersigned counsel, moves the Court for the relief requested below and gives notice of hearing herewith.
2. The Court will hold a hearing on this motion on October 14, 2004 at 2:00 o'clock p.m., or as soon thereafter as counsel may be heard, in Courtroom No. 8W, 8th Floor, U. S. Courthouse, 300 South Fourth Street, Minneapolis, Minnesota, before the Honorable Robert J. Kressel, United States Bankruptcy Judge.
3. Any response to this motion must be filed and delivered not later than 2:00 o'clock p.m. on October 8, 2004 which is three business days before the time set for the hearing, or filed and served by mail not later than October 4, 2004 which is seven business days before the time set for the hearing. **IF NO TIMELY RESPONSES TO THE MOTION ARE FILED, THE COURT MAY GRANT THE RELIEF REQUESTED WITHOUT A HEARING.**
4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, Bankruptcy Rule 5005 and Local Rule 5005-1. This proceeding is a core proceeding.
5. The petition commencing this Chapter 7 case was filed by the debtors on March 7, 2003. The case is now pending in this Court.
6. Movant requests relief from the automatic stay of 11 U.S.C. § 362 to allow it to exercise its state Court remedies to foreclose its mortgage on certain real property owned by the debtors located at 10340 Tamarack Street, Coon Rapids, Anoka County, Minnesota, legally described as follows:

Lot 7, Block 2, Aron Heights in the City of Coon Rapids, County of
Anoka, State of Minnesota
7. At the time of the Chapter 7 filing the debtors were the owners of the foregoing real property which they occupied as their homestead. The debtors claimed the property as exempt property in their bankruptcy petition and schedules.

8. Debtors are indebted to Secured Creditor in the original principal amount of \$43,500.00 as evidenced by that certain Promissory Note dated July 25, 2002, a copy of which is attached hereto as Exhibit "A", together with interest thereon.
9. The debtors' indebtedness is secured by a second mortgage on real estate in which the debtors have an interest as evidenced by that certain mortgage deed dated July 25, 2002, executed by Albert H. Knack, Jr. and Kerri S. Knack, husband and wife, recorded on September 11, 2002 as document number 1708455, a copy of which is attached hereto as Exhibit B. The property is located in Anoka County, Minnesota, and is legally described as follows to-wit:

Lot 7, Block 2, Aron Heights in the City of Coon Rapids, County of Anoka, State of Minnesota

Secured creditor is the holder of said mortgage and is entitled to enforce the terms thereof.

10. At all times material, Debtors were in default of the payments and performance of obligations to Secured Creditor.
11. Pursuant to 11 U.S.C. § 362(g), the burden is on the Debtors to prove absence of cause and/or adequate protection. The Secured Creditor's interest in the property is not adequately protected where, as of September 16, 2004, Debtor is delinquent in the making of post-petition monthly payments as required for the months of September, 2003 through August, 2004, inclusive, in the amount of \$400.00 per month, plus late charges of \$20.00 per month, plus attorneys fees and costs. In addition, the payment for September, 2004 will come due prior to the date of the hearing on this motion. Debtors have failed to make any offer of adequate protection.
12. Secured Creditor desires to protect its interest in the aforementioned property and requests the Court to vacate the stay of actions to allow foreclosure pursuant to Minnesota law.
13. Secured Creditor has incurred and will incur legal fees and costs to protect and enforce its rights in the subject property.

WHEREFORE, Secured Creditor, by its undersigned attorney, moves the Court for an Order for judgment that the automatic stay provided by 11 U.S.C. § 362(a) be modified so as to

permit Secured Creditor to commence mortgage foreclosure proceedings under state law and granting such other and further relief as the Court deems just and equitable.

Date: September 17, 2004.

BUCKLEY & JENSEN

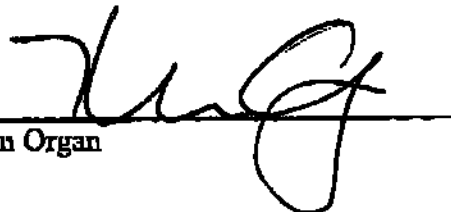
By/e/ Mary Jo A. Jensen-Carter
Mary Jo A. Jensen-Carter, #186041
1339 East County Road D
Vadnais Heights, MN 55109
(651) 486-7475

Attorney for Farmers State Bank - Dennison

VERIFICATION

I, Ken Organ, Vice President of Farmers State Bank - Dennison, the movant herein, certify under penalty of perjury that I have read the foregoing Notice of Hearing and Motion for Relief from Stay and the information contained therein is true and correct to the best of my knowledge, information and belief.

Date: September 16, 2004.


Ken Organ

ALBERT H. KNACK, JR.; KERRI S. KNACK
10340 TAMARACK ST NW
COON RAPIDS, MN 55433

FARMERS STATE BANK
DENNISON BRANCH
37470 1ST AVE CT
BOX 27
DENNISON, MN 55018

LENDER'S NAME AND ADDRESS
"You" and "your" means the lender, its successors
and assigns.

Loan Number 9687
Date 07-25-2002
Maturity Date 08-15-2007
Loan Amount \$ 43,500.00
Renewal Of 9557

BORROWER'S NAME AND ADDRESS

"I", "me" and "my" means each borrower above,
together and separately.

I promise to pay you, at your address listed above, the PRINCIPAL sum of FORTY THREE THOUSAND FIVE HUNDRED AND NO/100

Dollars \$ 43,500.00

☒ **Single Advance:** I will receive all of the loan amount on 07-25-2002. There will be no additional advances under this note.

☐ **Multiple Advance:** The loan amount shown above is the maximum amount I can borrow under this note. On

I will receive \$ _____ and future principal advances are permitted.

Conditions: The conditions for future advances are _____

☐ **Open End Credit:** You and I agree that I may borrow up to the maximum amount more than one time. All other conditions of this note apply to this feature. This feature expires on _____

☐ **Closed End Credit:** You and I agree that I may borrow up to the maximum only one time (and subject to all other conditions).

INTEREST: I agree to pay interest on the outstanding principal balance from 07-25-2002 at the rate of 9.500 % per year until 08-15-2007

☐ **Variable Rate:** This rate may then change as stated below.

☐ **Index Rate:** The future rate will be _____ the following index rate: _____

☐ **No Index:** The future rate will not be subject to any internal or external index. It will be entirely in your control.

☐ **Frequency and Timing:** The rate on this note may change as often as _____

A change in the interest rate will take effect _____

☐ **Limitations:** During the term of this loan, the applicable annual interest rate will not be more than _____ % or less than _____ %.

Effect of Variable Rate: A change in the interest rate will have the following effect on the payments:

☐ The amount of each scheduled payment will change.

☐ The amount of the final payment will change.

☐ _____

ACCRUAL METHOD: You will calculate interest on a ACTUAL/365 basis.

POST MATURITY RATE: I agree to pay interest on the unpaid balance of this note owing after maturity, and until paid in full, as stated below:

☒ on the same fixed or variable rate basis in effect before maturity (as indicated above).

☐ at a rate equal to _____

☒ **LATE CHARGE:** If I make a payment more than 10 days after it is due, I agree to pay a late charge of 5.000% OF THE LATE AMOUNT WITH A MIN OF \$5.00 AND A MAX OF \$20.00

☒ **ADDITIONAL CHARGES:** In addition to interest, I agree to pay the following charges which ☒ are ☐ are not included in the principal amount above: _____

☐ **Authority:** The interest rate and other charges for this loan are authorized by _____

PAYMENTS: I agree to pay this note as follows:

59 MONTHLY PAYMENTS OF \$400.00 BEGINNING 09-15-2002 AND 1 BALLOON PAYMENT OF \$39,665.23 ON 08-15-2007.

ADDITIONAL TERMS:

☒ **SECURITY:** This note is separately secured by (describe separate document by type and date): MORTGAGE DATED JULY 25, 2002 AND SECURITY AGREEMENT DATED JULY 25, 2002

(This section is for your internal use. Failure to list a separate security document does not mean the agreement will not secure this note.)

Signature for Lender

KEN ORGAN, BRANCH MANAGER

PURPOSE: The purpose of this loan is CONSOLIDATE DEBT

SIGNATURES: I AGREE TO THE TERMS OF THIS NOTE INCLUDING THOSE ON PAGE 2). I have received a copy on today's date.

ALBERT H. KNACK, JR.

KERRI S. KNACK

©1984, 1991 Bankers Systems, Inc., St. Cloud, MN Form UN-MN 2/12/96

1708455

23-31-24-42-0051

MORTGAGE
(With Future Advance Clause)

1. **DATE AND PARTIES.** The date of this Mortgage (Security Instrument) is 07-25-2002 and the parties, their addresses and tax identification numbers, if required, are as follows:

MORTGAGOR: ALBERT H. KNACK, JR. AND KERRI S. KNACK, AS HUSBAND AND WIFE
10340 TAMARACK ST NW
COON RAPIDS, MN 55433

474-06-6075, 088-64-5035

- ☐ If checked, refer to the attached Addendum incorporated herein, for additional Mortgagors, their signatures and acknowledgments.

LENDER: FARMERS STATE BANK
DENNISON BRANCH
ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF MINNESOTA
37470 1ST AVE CT
BOX 27 DENNISON, MN 55018
410-25-0860

2. **CONVEYANCE.** For good and valuable consideration, the receipt and sufficiency of which is acknowledged, and to secure the Secured Debt (defined below) and Mortgagor's performance under this Security Instrument, Mortgagor grants, bargains, sells, conveys and mortgages to Lender, with the power of sale, the following described property: LOT 7, BLOCK 2, ARON HEIGHTS IN THE CITY OF COON RAPIDS, COUNTY OF ANOKA, STATE OF MINNESOTA.

The property is located in ANOKA at 10340 TAMARACK ST NW
(County)
COON RAPIDS Minnesota 55433
(Address) (City) (ZIP Code)

Together with all rights, easements, appurtenances, royalties, mineral rights, oil and gas rights, all water and riparian rights, ditches, and water stock and all existing and future improvements, structures, fixtures, and replacements that may now, or at any time in the future, be part of the real estate described above (all referred to as "Property").

3. **MAXIMUM OBLIGATION LIMIT.** ☒ Notwithstanding anything to the contrary herein, enforcement of this Security Instrument is limited to a predetermined debt amount of \$ 43,500.00 under chapter 287 of Minnesota Statutes. ☐ This Security Instrument secures an indeterminate amount and the mortgage registration tax will be paid according to chapter 287 of Minnesota Statutes. Additional amounts secured by this Security Instrument include interest and any other amount advanced by Lender in protection of the Property or this Security Instrument including but not limited to taxes, assessments, charges, claims, fines, impositions, insurance premiums, amounts due under prior or superior mortgages and other prior or superior liens, encumbrances and interests, legal expenses and attorneys' fees.
4. **SECURED DEBT AND FUTURE ADVANCES.** The term "Secured Debt" is defined as follows:
A. Debt incurred under the terms of all promissory note(s), contract(s), guaranty(s) or other evidence of debt described below and all their extensions, renewals, modifications or substitutions. (You must specifically identify the debt(s) secured and you should include the final maturity date of such debt(s).)

Exhibit B

- B. All future advances from Lender to Mortgagor executed after this Security Instrument whether or not this Security Instrument is specifically referenced. If more than one person signs this Security Instrument, each Mortgagor agrees that this Security Instrument will secure all future advances that are given to or incurred by any one or more Mortgagor, or any one or more Mortgagor and others. All future advances are secured by this Security Instrument even though all or part may not yet be advanced. Nothing in this Security Instrument shall constitute a commitment to make additional future advances or future loans or advances in any amount. Any such commitment must be agreed to in a separate writing.
- C. All additional sums advanced and expenses incurred by Lender for insuring, preserving or otherwise protecting the Property and its value and any other sums advanced and expenses incurred by Lender under the terms of this Security Instrument.
- This Security Instrument will not secure any other debt if Lender fails to give any required notice of the right of rescission.
5. **PAYMENTS.** Mortgagor agrees that all payments under the Secured Debt will be paid when due and in accordance with the terms of the Secured Debt and this Security Instrument.
6. **WARRANTY OF TITLE.** Mortgagor warrants that Mortgagor is or will be lawfully seized of the estate conveyed by this Security Instrument and has the right to grant, bargain, convey, sell and mortgage, with the power of sale, the Property. Mortgagor also warrants that the Property is unencumbered, except for encumbrances of record.
7. **PRIOR SECURITY INTERESTS.** With regard to any other mortgage, deed of trust, security agreement or other lien document that created a prior security interest or encumbrance on the Property, Mortgagor agrees:
- A. To make all payments when due and to perform or comply with all covenants.
- B. To promptly deliver to Lender any notices that Mortgagor receives from the holder.
- C. Not to allow any modification or extension of, nor to request any future advances under any note or agreement secured by the lien document without Lender's prior written consent.
8. **CLAIMS AGAINST TITLE.** Mortgagor will pay all taxes, assessments, liens, encumbrances, lease payments, ground rents, utilities, and other charges relating to the Property when due. Lender may require Mortgagor to provide to Lender copies of all notices that such amounts are due and the receipts evidencing Mortgagor's payment. Mortgagor will defend title to the Property against any claims that would impair the lien of this Security Instrument. Mortgagor agrees to assign to Lender, as requested by Lender, any rights, claims or defenses Mortgagor may have against parties who supply labor or materials to maintain or improve the Property.
9. **DUE ON SALE OR ENCUMBRANCE.** Lender may, at its option, declare the entire balance of the Secured Debt to be immediately due and payable upon the creation of, or contract for the creation of, any lien, encumbrance, transfer or sale of the Property. This right is subject to the restrictions imposed by federal law (12 C.F.R. 591), as applicable. This covenant shall run with the Property and shall remain in effect until the Secured Debt is paid in full and this Security Instrument is released.
10. **PROPERTY CONDITION, ALTERATIONS AND INSPECTION.** Mortgagor will keep the Property in good condition and make all repairs that are reasonably necessary. Mortgagor shall not commit or allow any waste, impairment, or deterioration of the Property. Mortgagor will keep the Property free of noxious weeds and grasses. Mortgagor agrees that the nature of the occupancy and use will not substantially change without Lender's prior written consent. Mortgagor will not permit any change in any license, restrictive covenant or easement without Lender's prior written consent. Mortgagor will notify Lender of all demands, proceedings, claims and actions against Mortgagor, and of any loss or damage to the Property.
- Lender or Lender's agents may, at Lender's option, enter the Property at any reasonable time for the purpose of inspecting the Property. Lender shall give Mortgagor notice at the time of or before an inspection specifying a reasonable purpose for the inspection. Any inspection of the Property shall be entirely for Lender's benefit and Mortgagor will in no way rely on Lender's inspection.
11. **AUTHORITY TO PERFORM.** If Mortgagor fails to perform any duty or any of the covenants contained in this Security Instrument, Lender may, without notice, perform or cause them to be performed. Mortgagor appoints Lender as attorney in fact to sign Mortgagor's name or pay any amount necessary for performance. Lender's right to perform for Mortgagor shall not create an obligation to perform, and Lender's failure to perform will not preclude Lender from exercising any of Lender's other rights under the law or this Security Instrument. If any construction on the Property is discontinued or not carried on in a reasonable manner, Lender may take all steps necessary to protect Lender's security interest in the Property, including completion of the construction.
12. **ASSIGNMENT OF LEASES AND RENTS.** Except as otherwise provided in this section, Mortgagor irrevocably grants, bargains, conveys, sells and mortgages to Lender as additional security all the right, title and interest in and to any and all existing or future leases, subleases, and any other written or verbal agreements for the use and occupancy of any portion of the Property, including any extensions, renewals, modifications or substitutions of such agreements (all referred to as "Leases") and rents, issues and profits (all referred to as "Rents"). Mortgagor will promptly provide Lender with true and correct copies of all existing and future Leases. Mortgagor may collect, receive, enjoy and use the Rents so long as Mortgagor is not in default under the terms of this Security Instrument.
- Mortgagor agrees that this assignment is effective immediately upon the execution of this mortgage and perfected upon the recording of this Mortgage. This assignment will remain in effect during any redemption period until the Secured Debt is satisfied. Mortgagor agrees that Lender may take actual possession of the property without the necessity of commencing legal action. On receiving notice of default, Mortgagor will endorse and deliver to Lender any payment of Rents in Mortgagor's possession and will receive any Rents in trust for Lender and will not commingle the Rents with any other funds. Any amounts collected will be applied first, as set forth in M.S.A. §576.01, subdivision 2, and then, as otherwise provided in this Security Instrument. Mortgagor warrants that no default exists under the Leases or any applicable landlord/tenant law. Mortgagor also agrees to maintain and require any tenant to comply with the terms of the Leases and applicable law.
- This section applies only if the Mortgage secures an original principal debt of \$100,000 or more or is a lien upon residential real estate containing more than four dwelling units, and is not a lien upon property which is entirely homesteaded as agricultural property or residential real estate containing four or fewer dwelling units where at least one of the units is homesteaded. This assignment may only be enforced against the nonhomestead portion of the mortgaged property.
13. **LEASEHOLDS; CONDOMINIUMS; PLANNED UNIT DEVELOPMENTS.** Mortgagor agrees to comply with the provisions of any lease if this Security Instrument is on a leasehold. If the Property includes a unit in a condominium or a planned unit development, Mortgagor will perform all of Mortgagor's duties under the covenants, by-laws, or regulations of the condominium or planned unit development.
14. **DEFAULT.** Mortgagor will be in default if any of the following occur:
- A. Any party obligated on the Secured Debt fails to make payment when due.
- B. A breach occurs under the terms of this Security Instrument or any other document executed for the purpose of creating, securing or guarantying the Secured Debt.
- C. Any statement, representation or warranty made by Mortgagor or any co-maker, endorser, guarantor or surety to Lender at any time shall prove to have been incorrect or misleading in any material respect when made.
- D. Mortgagor or any such co-maker, endorser, guarantor or surety shall die, liquidate, merge, consolidate, transfer a substantial part of its property, or if a partnership, limited liability partnership, or limited liability company, suffer the death, dissolution or liquidation of any partner or member.

- E. A good faith belief by Lender that Lender at any time is insecure with respect to any person or entity obligated on the Secured Debt or that the prospect of any payment or the value of the Property is impaired.
15. **REMEDIES ON DEFAULT.** If the Secured Debt is subject to Minn. Stat. § 47.20, subd. 8, Lender will give borrower written notice of default prior to foreclosure, by certified mail at the address of the Property listed in this Security Instrument or such other address borrower may have designated to Lender in writing, unless the default consists of the sale of the Property without Lender's consent. The notice will specify: (a) the nature of the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is mailed by which the default must be cured; (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by the Security Instrument and sale of the Property; (e) that the borrower has the right to reinstate the Security Instrument after acceleration; and (f) that the borrower has the right to bring a court action to assert the nonexistence of a default or any other defense of the borrower to acceleration and sale. Additionally, in some other instances, federal and state law will require Lender to provide Mortgagor with notice of the right to cure or other notices and may establish time schedules for foreclosure actions. Subject to these limitations, if any, Lender may accelerate the Secured Debt and foreclose this Security Instrument in a manner provided by law if Mortgagor is in default. Upon default, Lender shall have the right, without declaring the whole indebtedness due and payable, to foreclose against all or any part of the Property. This lien shall continue as a lien on any part of the Property not sold on foreclosure.
- At the option of Lender, all or any part of the agreed fees and charges, accrued interest and principal shall become immediately due and payable, after giving notice if required by law, upon the occurrence of a default or anytime thereafter. In addition, Lender shall be entitled to all the remedies provided by law, the terms of the Secured Debt, this Security Instrument and any related documents including without limitation, the power to sell the property.
- If there is a default, Lender may, in addition to any other permitted remedy, advertise and sell the property as a whole or in separate parcels at public auction to the highest bidder for cash and convey absolute title free and clear of all right, title and interest of Mortgagor at such time and place as Lender designates. If Lender invokes the power of sale, Lender shall give notice of the sale including the time, terms and place of sale and a description of the property to be sold as required by the applicable law in effect at the time of the proposed sale. Lender or its designee may purchase the Property at any sale.
- Upon the sale of the Property and to the extent not prohibited by law, Lender shall make and deliver a deed to the Property sold which conveys absolute title to the purchaser. Lender shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including but not limited to, reasonable attorneys' fees; (b) to all sums secured by this Mortgage; (c) any excess to the person or persons legally entitled to it. The recitals in any deed of conveyance shall be prima facie evidence of the facts set forth therein.
- If the Property is sold pursuant to this section, Mortgagor, or any person holding possession of the Property through Mortgagor, shall immediately surrender possession of the Property to the purchaser at the sale. If possession is not surrendered, Mortgagor or such person shall be a tenant holding over and may be dispossessed in accordance with applicable law.
- All remedies are distinct, cumulative and not exclusive, and the Lender is entitled to all remedies provided at law or equity, whether or not expressly set forth. The acceptance by Lender of any sum in payment or partial payment on the Secured Debt after the balance is due or is accelerated or after foreclosure proceedings are filed shall not constitute a waiver of Lender's right to require complete cure of any existing default. By not exercising any remedy on Mortgagor's default, Lender does not waive Lender's right to later continue the event a default if it continues or happens again.
16. **EXPENSES; ADVANCES ON COVENANTS; ATTORNEYS' FEES; COLLECTION COSTS.** Except when prohibited by law, Mortgagor agrees to pay all of Lender's expenses if Mortgagor breaches any covenant in this Security Instrument. Mortgagor will also pay on demand any amount incurred by Lender for insuring, inspecting, preserving or otherwise protecting the Property and Lender's security interest. These expenses will bear interest from the date of the payment until paid in full at the contract interest rate in effect from time to time as provided in the terms of the Secured Debt. Mortgagor agrees to pay all costs and expenses incurred by Lender in collecting, enforcing or protecting Lender's rights and remedies under this Security Instrument. This amount may include, but is not limited to, attorneys' fees, court costs, and other legal expenses. This Security Instrument shall remain in effect until released. Mortgagor agrees to pay for any recordation costs of such release.
17. **ENVIRONMENTAL LAWS AND HAZARDOUS SUBSTANCES.** As used in this section, (1) Environmental Law means, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA, 42 U.S.C. 9601 et seq.), and all other federal, state and local laws, regulations, ordinances, court orders, attorney general opinions or interpretive letters concerning the public health, safety, welfare, environment or a hazardous substance; and (2) Hazardous Substance means any toxic, radioactive or hazardous material, waste, pollutant or contaminant which has characteristics which render the substance dangerous or potentially dangerous to the public health, safety, welfare or environment. The term includes, without limitation, any substances defined as "hazardous material," "toxic substances," "hazardous waste" or "hazardous substance" under any Environmental Law.
- Mortgagor represents, warrants and agrees that:
- A. Except as previously disclosed and acknowledged in writing to Lender, no Hazardous Substance is or will be located, stored or released on or in the Property. This restriction does not apply to small quantities of Hazardous Substances that are generally recognized to be appropriate for the normal use and maintenance of the Property.
 - B. Except as previously disclosed and acknowledged in writing to Lender, Mortgagor and every tenant have been, are, and shall remain in full compliance with any applicable Environmental Law.
 - C. Mortgagor shall immediately notify Lender if a release or threatened release of a Hazardous Substance occurs on, under or about the Property or there is a violation of any Environmental Law concerning the Property. In such an event, Mortgagor shall take all necessary remedial action in accordance with any Environmental Law.
 - D. Mortgagor shall immediately notify Lender in writing as soon as Mortgagor has reason to believe there is any pending or threatened investigation, claim, or proceeding relating to the release or threatened release of any Hazardous Substance or the violation of any Environmental Law.
18. **CONDEMNATION.** Mortgagor will give Lender prompt notice of any pending or threatened action, by private or public entities to purchase or take any or all of the Property through condemnation, eminent domain, or any other means. Mortgagor authorizes Lender to intervene in Mortgagor's name in any of the above described actions or claims. Mortgagor assigns to Lender the proceeds of any award or claim for damages connected with a condemnation or other taking of all or any part of the Property. Such proceeds shall be considered payments and will be applied as provided in this Security Instrument. This assignment of proceeds is subject to the terms of any prior mortgage, deed of trust, security agreement or other lien document.
19. **INSURANCE.** Mortgagor shall keep Property insured against loss by fire, flood, theft and other hazards and risks reasonably associated with the Property due to its type and location. This insurance shall be maintained in the amounts and for the periods that Lender requires. The insurance carrier and the insurance shall be chosen by Mortgagor subject to Lender's approval, which shall not be unreasonably withheld. If Mortgagor fails to maintain the coverage described above, Lender may, at Lender's option, obtain coverage to protect Lender's rights in the Property according to the terms of this Security Instrument.

All insurance policies and renewals shall be acceptable to Lender and shall include a standard "mortgage clause" and, where applicable, "loss payee clause." Mortgagor shall immediately notify Lender of cancellation or termination of the insurance. Lender shall have the right to hold the policies and renewals. If Lender requires, Mortgagor shall immediately give to Lender all receipts of paid premiums and renewal notices. Upon loss, Mortgagor shall give immediate notice to the insurance carrier and Lender. Lender may make proof of loss if not made immediately by Mortgagor. Unless otherwise agreed in writing, all insurance proceeds shall be applied to the restoration or repair of the Property or to the Secured Debt, whether or not then due, at Lender's option. Any application of proceeds to principal shall not extend or postpone the due date of the scheduled payment nor change the amount of any payment. Any excess will be paid to the Mortgagor. If the Property is acquired by Lender, Mortgagor's right to any insurance policies and proceeds resulting from damage to the Property before the acquisition shall pass to Lender to the extent of the Secured Debt immediately before the acquisition.

20. **ESCROW FOR TAXES AND INSURANCE.** Unless otherwise provided in a separate agreement, Mortgagor will not be required to pay to Lender funds for taxes and insurance in escrow.
21. **FINANCIAL REPORTS AND ADDITIONAL DOCUMENTS.** Mortgagor will provide to Lender upon request, any financial statement or information Lender may deem reasonably necessary. Mortgagor agrees to sign, deliver, and file any additional documents or certifications that Lender may consider necessary to perfect, continue, and preserve Mortgagor's obligations under this Security Instrument and Lender's lien status on the Property.
22. **JOINT AND INDIVIDUAL LIABILITY; CO-SIGNERS; SUCCESSORS AND ASSIGNS BOUND.** All duties under this Security Instrument are joint and individual. If Mortgagor signs this Security Instrument but does not sign an evidence of debt, Mortgagor does so only to mortgage Mortgagor's interest in the Property to secure payment of the Secured Debt and Mortgagor does not agree to be personally liable on the Secured Debt. If this Security Instrument secures a guaranty between Lender and Mortgagor, Mortgagor agrees to waive any rights that may prevent Lender from bringing any action or claim against Mortgagor or any party indebted under the obligation. These rights may include, but are not limited to, any anti-deficiency or one-action laws. Mortgagor agrees that Lender and any party to this Security Instrument may extend, modify or make any change in the terms of this Security Instrument or any evidence of debt without Mortgagor's consent. Such a change will not release Mortgagor from the terms of this Security Instrument. The duties and benefits of this Security Instrument shall bind and benefit the successors and assigns of Mortgagor and Lender.
23. **APPLICABLE LAW; SEVERABILITY; INTERPRETATION.** This Security Instrument is governed by the laws of the jurisdiction in which Lender is located, except to the extent otherwise required by the laws of the jurisdiction where the Property is located. This Security Instrument is complete and fully integrated. This Security Instrument may not be amended or modified by oral agreement. Any section in this Security Instrument, attachments, or any agreement related to the Secured Debt that conflicts with applicable law will not be effective, unless that law expressly or impliedly permits the variations by written agreement. If any section of this Security Instrument cannot be enforced according to its terms, that section will be severed and will not affect the enforceability of the remainder of this Security Instrument. Whenever used, the singular shall include the plural and the plural the singular. The captions and headings of the sections of this Security Instrument are for convenience only and are not to be used to interpret or define the terms of this Security Instrument. Time is of the essence in this Security Instrument.
24. **NOTICE.** Unless otherwise required by law, any notice shall be given by delivering it or by mailing it by first class mail to the appropriate party's address on page 1 of this Security Instrument, or to any other address designated in writing. Notice to one mortgagor will be deemed to be notice to all mortgagors.
25. **WAIVERS.** Except to the extent prohibited by law, Mortgagor waives all appraisal, dower and homestead exemption rights relating to the Property.
26. **OTHER TERMS.** If checked, the following are applicable to this Security Instrument:

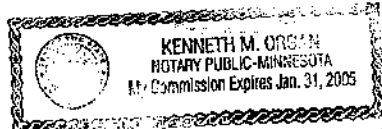
- ☐ **Construction Loan.** This Security Instrument secures an obligation incurred for the construction of an improvement on the Property.
- ☐ **Fixture Filing.** Mortgagor grants to Lender a security interest in all goods that Mortgagor owns now or in the future and that are or will become fixtures related to the Property. This Security Instrument suffices as a financing statement and any carbon, photographic or other reproduction may be filed of record for purposes of Article 9 of the Uniform Commercial Code.
- ☐ **Riders.** The covenants and agreements of each of the riders checked below are incorporated into and supplement and amend the terms of this Security Instrument. [Check all applicable boxes]
- ☐ Condominium Rider ☐ Planned Unit Development Rider ☐ Other
- ☐ **Additional Terms.**

SIGNATURES: By signing below, Mortgagor agrees to the terms and covenants contained in this Security Instrument and in any attachments. Mortgagor also acknowledges receipt of a copy of this Security Instrument on the date stated on page 1.

(Signature) Albert H. Knack, Jr. 7/25/02 (Date) (Signature) Kerri S. Knack 7/25/02 (Date)

ACKNOWLEDGMENT:

(Individual) STATE OF MINNESOTA, COUNTY OF Goodhue ss.
This instrument was acknowledged before me this 25TH day of JULY, 2002
by ALBERT H. KNACK, JR.; KERRI S. KNACK, AS HUSBAND AND WIFE
My commission expires:
(Seal) [Signature] (Notary Public)



This instrument was prepared by FARMERS STATE BANK, of 37470 1ST AVE CT.
DENISON, MN 55019

ABSTRACT

Receipt # <u>112564/135.05</u>	<input type="checkbox"/> Incorrect/No Reference #
Date/Time <u>9-11-17:00</u>	<input checked="" type="checkbox"/> Non-standard Document
Document Order <u>1</u> of <u>1</u>	<input type="checkbox"/> Certified Copy/
PINs <u>9</u>	
Recordability <u>9</u>	
Filing Fees <u>\$30.00</u>	<input type="checkbox"/> Tax Lien/Release
Copy/Additional Pg Fees \$ <u> </u>	<input type="checkbox"/> Transfer
Well Cert Fees \$ <u> </u>	<input type="checkbox"/> Division
<input type="checkbox"/> Incomplete Form	<input type="checkbox"/> Status
<input type="checkbox"/> Missing Attachment	<input type="checkbox"/> New legal Description
<input type="checkbox"/> No Legal Description	<input type="checkbox"/> GAC
<input type="checkbox"/> Non-existent Legal Description	<input type="checkbox"/> Deferred Specials
<input type="checkbox"/> Part(s) Illegible	<input checked="" type="checkbox"/> No Change

DOCUMENT NO. 1708455.0 ABSTRACT
ANOKA COUNTY MINNESOTA

I HEREBY CERTIFY THAT THE WITHIN INSTRUMENT WAS FILED IN THIS OFFICE
 FOR RECORD ON **SEP 11 2002**
 AT **5:00 PM** AND WAS DULY RECORDED.
 FEES AND TAXES IN THE AMOUNT OF **\$135.05 PAID.**

RECEIPT NO. MAU200209112564
 ANOKA COUNTY PROPERTY TAX ADMINISTRATOR/RECORDER/REGISTRAR OF TITLES
 BY RP
 DEPUTY PROPERTY TAX ADMINISTRATOR/RECORDER/REGISTRAR OF TITLES

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION**

In Re:

Chapter 13

Bankruptcy No. 03-41687

Albert Henry Knack, Jr. and
Kerri Sue Knack,

**MEMORANDUM IN SUPPORT OF
MOTION FOR RELIEF FROM STAY**

Debtor.

FACTS

The debtors filed a petition for relief under Chapter 7 of the United States Bankruptcy Code on March 7, 2003. Based upon the factual information set forth in the motion papers filed herewith and the argument set forth in this Memorandum, movant now asks this Court to enter an Order granting the movant relief from the stay to allow movant to proceed with its state law remedies to obtain possession of collateral subject to its lien.

ARGUMENT

GOOD CAUSE EXISTS TO GRANT THE MOVANT RELIEF FROM THE STAY.

11 U.S.C. § 362(d)(1) of the Bankruptcy Code specifies the following conditions that must be met in order for a party in interest to be entitled to relief from the automatic stay under the provisions of that section:

On request of a party in interest and after notice and hearing, the Court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying or conditioning such stay, (1) for cause, including the lack of adequate protection of an interest in property of such party in interest; (2) with respect to a stay of an act against property under subsection (a) of this section, if - (A) the debtor does not have an equity in such property; and (B) such property is not necessary to an effective reorganization...

Movant is entitled to relief under 11 U.S.C. § 362(d)(1) for cause because the movant's

interest in the property is not being adequately protected. The debtors have defaulted on the payments due under the Note and have made no effort to adequately protect the movant's interest in the property. Interest continues to accrue on the Note, thereby increasing the balance due. Under the circumstances, cause exists to grant movant relief from the automatic stay to proceed to exercise its state law remedies to foreclose on the collateral.

CONCLUSION

For the reasons stated above, the movant's motion to terminate the automatic stay should be granted.

Date: September 17, 2004.

BUCKLEY & JENSEN

By /e/ Mary Jo A. Jensen-Carter
Mary Jo A. Jensen-Carter, #186041
1339 East County Road D
Vadnais Heights, MN 55109
651-486-7475

Attorney for Farmers State Bank - Dennison

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION**

In Re:

Chapter 13

Bankruptcy No. 03-41687

Albert Henry Knack, Jr. and
Kerri Sue Knack,

Debtor(s)

UNSWORN CERTIFICATE OF SERVICE

I, Ann M. Gagner, declare under penalty of perjury that on September 20, 2004, I served copies of the attached *Notice of Hearing and Motion for Relief from Stay, Memorandum in Support of Motion for Relief from Stay, and a proposed Order* by first class U.S. Mail, to the following parties:

Albert H. Knack, Jr. Kerri S. Knack 10340 Tamarack Street Coon Rapids, MN 55433	United States Trustee 1015 U.S. Courthouse 300 South Fourth Street Minneapolis, MN 55415
Curtis K. Walker 4356 Nicollet Avenue South Minneapolis, MN 55409	Jasmine Z. Keller 12 South 6 th Street, Suite 310 Minneapolis, MN 55402
Bank of America c/o James A. Geske 7650 Currell Blvd, Suite 300 Woodbury, MN 55125	

Executed on: September 20, 2004.

Signed: /e/ Ann M. Gagner

Ann M. Gagner

Buckley & Jensen

1339 East County Road D

Vadnais Heights, MN 55109

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION**

In Re:

Chapter 13
Bankruptcy No. 03-41687

Albert Henry Knack, Jr. and
Kerri Sue Knack,

**ORDER GRANTING MOTION
FOR RELIEF FROM STAY**

Debtors.

A hearing on the motion of Farmers State Bank - Dennison for an Order terminating the stay of 11 U.S.C. § 362 to allow it to exercise its state law remedies to commence a mortgage foreclosure proceeding under state law against property owned by the debtors was held before the undersigned Judge of Bankruptcy Court on October 14, 2004. Appearances, if any, are noted in the Court's record. Based upon the motion papers, the arguments of counsel, and all of the files and proceedings herein,

IT IS HEREBY ORDERED:

1. The automatic stay of 11 U.S.C. § 362 is modified so as to allow Farmers State Bank – Dennison to exercise its state law remedies to commence a mortgage foreclosure proceeding on the following described real property :

Lot 7, Block 2, Aron Heights, in the City of Coon Rapids, County of Anoka

Notwithstanding Federal Rule of Bankruptcy Procedure 4001(a)(3), this Order shall be effective immediately.

Dated: _____, 2004.

Robert J. Kressel
United States Bankruptcy Judge